

REMARKS

Status of the claims:

Claims 1, 19, 24-27, 30, 35, and 37 have been amended in the present amendment.

Claims 35 and 37 were previously withdrawn as being drawn to a non-elected invention. Applicants have amended claims 35 and 37 in the present amendment and their current status identifier is “withdrawn-currently amended.”

Claims 10-13 were previously canceled. Claims 8, 9, and 29 have been canceled in the present amendment. Claims 16-18 were previously withdrawn by the office as being drawn to a non-elected invention. Applicants have now canceled claims 16-18 in the present amendment. Claim 34 was previously withdrawn as being drawn to a non-elected invention. Applicants have canceled claim 34 in the present amendment.

The restriction Group I, which was elected in the present application, excluded claims 2, 4, 7, 14, 15, 23, and 28. Applicants have not yet withdrawn those claims or canceled them as they conform to the restriction requirement if the present amendment is entered. Accordingly, Applicants believe claims 2, 4, 7, 14, 15, 23, and 28 should be presently pending in the current application. Applicants respectfully request that the Office state that claims 2, 4, 7, 14, 15, 23, and 28 are part of Group I of the elected restriction group and have been considered in the present application, or state why on the record that they are not part of Group I of the elected restriction group.

If the present amendment is entered, claims 1-7, 14, 15, 19-28, 30-32 will be pending in the application.

Applicants respectfully request that the present amendments to the claims be entered because they either place the application in better form for appeal or they place the application in condition for allowance.

I. Claim amendments

Claims 1, 19, 24-27, and 30 have been amended to conform to the restriction requirement of September 6, 2007.

Claim 1 was amended to restrict Z to a 5 membered ring with one nitrogen present. Claim 27 has been amended to recite the depicted five membered ring where $n=1$, containing one nitrogen. Claim 29 was canceled in view of the fact that claim 27, from which claim 29 depends, has been amended to recite that $n=1$. Claim 30 was amended to delete those compounds where Z was not a 5 membered ring with one nitrogen present, or where Z was substituted with a heterocycl.

Claims 1, 19, 24-26, and 27 were amended to remove a 3- to 10-membered heterocycl as a substituent of R^3 , R^4 , or R^5 , and to remove R^3 , R^4 , or R^5 forming a 3- to 10-membered heterocycl, as the restriction requirement stated that Z is five member ring containing one nitrogen and “is the only heterocyclic group present.” Similarly, claim 30 was amended to delete those compounds to remove a 3- to 10-membered heterocycl as a substituent of R^3 , R^4 , or R^5 , and to remove R^3 , R^4 , or R^5 forming a 3- to 10-membered heterocycl, as the restriction requirement stated that Z is five member ring containing one nitrogen and “is the only heterocyclic group present.” Claim 8 was canceled in the present amendment for the same reasons.

Claims 1, 19, 24-26, 27, and 30 were amended to delete 5 to 10-membered heteroaryl as a substituent of Y, R^7 , R' , R'' , R''' , R^3 , R^4 or R^5 .

The Office Action reminded the Applicant to amend the method claims for potential rejoinder. Applicants have amended claims 35 and 37 in the present amendment and their current status identifier is “withdrawn-currently amended.”

II. Claim Rejections – Provisional obviousness-type double patenting over co-pending Application Nos. 11/202,961 and 11/475,456

The present application was provisionally rejected in the last Office Action for obviousness-type double patenting over Application Nos. 11/202,961 and 11/475,456. Applicant’s arguments about the obviousness-type double patenting were found “persuasive” by the Office, however, the Office Action did not state to whether the

arguments were persuasive as to one or both of Application Nos. 11/202,961 and 11/475,456. The Examiner stated that the rejection would be withdrawn at the time of allowance. In the December 3, 2008 Advisory Action, the Office indicated that the double patenting rejection over Application No. 11/202,961 had been withdrawn. Therefore, it is the Applicants' understanding that the rejection over Application No. 11/475,456 is still in effect until allowance or a formal and unequivocal withdrawal of the rejection. Applicants therefore maintain the same arguments put forth previously and restate them here for the record:

Claims 1-38 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of co-pending application 11/478,456. As this is a provisional rejection and as the '961 application has neither been examined nor allowed, Applicants request withdrawal of this rejection at this time (See MPEP § 804).

CONCLUSION

The Examiner is invited to contact the undersigned agent for the applicants via telephone if such communication would expedite this application.

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are in condition for allowance.

Respectfully submitted,

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Date

/EJB/

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